

House Bill 130

By: Representatives Marin of the 96<sup>th</sup>, Floyd of the 99<sup>th</sup>, Thomas of the 100<sup>th</sup>, Coan of the 101<sup>st</sup>, Heard of the 104<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 15 of Title 16 of the Official Code of Georgia Annotated, the "Georgia Street Gang Terrorism and Prevention Act," so as to change certain definitions; to change certain provisions relating to the prohibition against participation in criminal street gang activity; to provide for the admissibility of certain evidence at trial; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 15 of Title 16 of the Official Code of Georgia Annotated, the "Georgia Street Gang Terrorism and Prevention Act," is amended by striking in its entirety Code Section 16-15-3, relating to definitions, and inserting in lieu thereof the following:

"16-15-3.

As used in this chapter, the term:

(1) 'Criminal street gang' means any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in a pattern of criminal gang activity as defined in paragraph (2) of this Code section. The existence of such organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics.

(2) 'Pattern of criminal gang activity' means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the following offenses, provided that at least one of these offenses occurred after July 1, 1998, and the last of such offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity:

(A) Any offense defined as racketeering activity by Code Section 16-14-3;

(B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

- (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy, 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;
- (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and other offenses related to confinement;
- (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous instrumentalities and practices;
- (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or 42-5-19, relating to the security of state or county correctional facilities; and
- (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging a child to escape from custody;
- (H) Any offense of criminal trespass or criminal damage to property resulting from any act of painting on, tagging, marking on, writing on, or otherwise depositing any form of graffiti on the property of another;
- (I) Any criminal offense designated a felony in this state or any other state or the United States; any offense punishable by more than one year imprisonment in any other state or the United States; or any offense committed in any other state which would constitute a felony if committed in this state; and
- (J) Any criminal offense committed in this state or any other state, district, or territory that involves the use of violence, possession of a weapon, or the use of a weapon, whether such act is designated a felony or not, and regardless of the maximum sentence which could be imposed or was actually imposed for such offense."

## SECTION 2.

Said chapter is further amended by striking in its entirety Code Section 16-15-4, relating to the prohibition against participation in criminal street gang activity, and inserting in lieu thereof the following:

"16-15-4.

(a) It shall be unlawful for any person employed by or associated with a criminal street gang to conduct or participate in such criminal street gang through ~~a pattern of criminal gang activity~~ the commission of any offense enumerated in paragraph (2) of Code Section 16-15-3.

(b) It shall be unlawful for any person to acquire or maintain, directly or indirectly, through a pattern of criminal gang activity or proceeds derived therefrom any interest in or control of any real or personal property of any nature, including money.

(c) It shall be unlawful for any person who occupies a position of organizer, supervisory position, or any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in a pattern of criminal gang activity.

(d) It shall be unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.

(e) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter such person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.

(f) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against such person for having withdrawn from a criminal street gang.

(g)(1) Any person who violates subsection (a) or (b) of this Code section shall, in addition to any other penalty imposed by law, be punished by imprisonment for not less than ~~three~~ five nor more than 15 years or by a fine of not less than ~~\$5,000.00~~ \$10,000.00 nor more than ~~\$10,000.00~~ \$15,000.00, or both.

(2) Any person who violates subsection (c) of this Code section may, in addition to any other penalty provided by law, be punished by imprisonment for an additional ten years which shall be served consecutively to any other sentence imposed on such person by law.

(3) Any person who violates subsection (d), (e), or (f) of this Code section shall, in addition to any other penalty provided by law, be punished by imprisonment for not less than ~~one~~ three nor more than ten years.

(h) Any crime committed in violation of this Code section shall be considered a separate offense."

### SECTION 3.

Said chapter is further amended by inserting at the end thereof the following:

"16-15-9.

The commission of any offense enumerated in paragraph (2) of Code Section 16-15-3 by any member of a criminal street gang shall be admissible in any trial or proceeding for the purpose of proving the existence of the criminal street gang and the pattern of criminal gang activity."

### SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.